

Attorney Docket No.: J6866(C)  
Serial No.: 10/712,490  
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Confirmation No.: 8338

**RESPONSE TO NON-COMPLIANT BRIEF**

Sir:

This is a Brief on Appellants' Appeal from the Examiner's Final Rejection concerning the above-identified application.

The Commissioner is hereby authorized to charge any additional fees, which may be required to our Deposit Account No. 12-1155, including all required fees under: 37 C.F.R §1.16; 37 C.F.R. §1.17; 37 C.F.R. §1.18; 37 C.F.R. §1.136.

## TABLE OF CONTENTS

I.	Real Party In Interest .....	3
II.	Related Appeals and Interferences.....	3
III.	Status of Claims .....	3
IV.	Status of Amendments .....	4
V.	Summary of the Claimed Subject Matter.....	4-56
VI.	Grounds of the Rejection to be Reviewed on Appeal.....	5-66
VII.	Argument.....	7-48-15
VIII.	Conclusion.....	15-16
IX.	Claims Appendix.....	16-19-20
X.	Evidence Appendix.....	20-21
XI.	Related Proceedings Appendix .....	21-22

### **I. REAL PARTY IN INTEREST**

The Real Party in Interest in this Appeal is Conopco, Inc., d/b/a Unilever, a corporation of the State of New York and formerly doing business as Unilever Home & Personal Care USA, a Division of Conopco, Inc.

### **II. RELATED APPEALS AND INTERFERENCES**

Neither the Appellants, their legal representatives nor the Assignee are aware of any other Appeals or Interferences relating to the present Appeal.

### **III. STATUS OF CLAIMS**

This Appeal is taken from the Final Rejection of claims 1 through 11 and 17 through 20, the pending claims in the application. Claims 12-16 were previously cancelled. A copy of the appealed claims is attached to this Brief as an Appendix.

### **IV. STATUS OF AMENDMENTS**

An Reply after the Final Rejection was filed on October 7, 2009. The Reply was entered by the Examiner for purposes of this Appeal. No amendments were made in the Reply.

#### **V. SUMMARY OF THE CLAIMED SUBJECT MATTER**

The inventions set forth in the claims on appeal are directed to systems for characterizing tactile perception on skin using acoustic emission. The systems are superior in that they help prove efficacy of a cosmetic product and/or aid in the selection of the consumer product. The systems employ a means for generating a signal which is emitted when skin on one area of the body slides or rubs on skin on another area of the body whereby motorized support is not required.

By the presently claimed invention, therefore, superior systems for characterizing tactile perception on skin are described. As may be readily gleaned from, for example, Examples 1-13 in the specification, the claimed systems unexpectedly result in proof of efficacy and/or facilitate cosmetic product selection for a consumer in a safe and pain free manner.

In the Specification, the portion from pages 1-2 is background. The phraseology used in independent claim 1 may be found, among other places, on page 3 of the specification as originally filed. The means for generating an acoustic emission signal includes contacting one area of the body with another area of the body. As set forth in the specification on page 10, this means can include a gentle rub of the hand or finger on another skin part such as the forearm, hand or face or other body parts. The means for collecting or recording data may be achieved with, for example, probes having sensors that do not touch the skin. The means for correlating the emission signal is achieved with a digitizing device. The use of a digitizing device is described at page 11 of the specification as originally filed.

The recording of the acoustic emission signal is achieved as described in the specification and Figure 1 with probes 12 that can include microphones 20, hydrophones 22, or accelerometers 24 of the system 10. Collecting, storing, displaying and correlating is achieved with an acquisition system 16 and an output system 18. Support for independent claim 5 may be found, among other places, on page 12 of the specification as originally filed. Figure 1, at 10 describes an acoustic emission system having a means to generate a signal. Such a signal is the results of skin rubbing on skin whereby probes 12 pick up such signals which are

correlated with an output system 18. Support for dependent claims may be found, among other places, on pages 9, 16 and 17 of the specification as originally filed. Beginning at page 18, working examples illustrate the unexpected and superior results obtained when utilizing the systems of this invention.

## **VI. GROUNDS OF THE REJECTION TO BE REVIEWED ON APPEAL**

The issues raised in this appeal are primarily ones of fact and of the type normally encountered in connection with rejections made under 35 USC §101, 35 USC §102(a) and 35 USC §103. In particular, the issues are as follows:

I. Would one of ordinary skill in the art, upon reading the claimed invention in view of the specification conclude that body parts are required in the claimed invention and that the same requires subject matter inconsistent with 35 USC §101;

II. Would one of ordinary skill in the art, upon reading Abstract of a presentation at a skin conference in Hamburg, 2003, specifically Flament et al., and entitled, "Finger Perception Metrology Correlation Between Friction Force and

Acoustic Emission" find claims 1, 3-6, 8-11 and 17-20 anticipated under 35 USC §102(a); and

III. Would one of ordinary skill in the art upon reading Abstract of a presentation at a skin conference in Hamburg, 2003, specifically Fleming, entitled, "Mobile, multimedia computing for improved clinicopathologic correlation in dermatopathology" find claims 2 and 7 obvious under 35 USC §103?

## **VII. ARGUMENT**

### **I. Rejection Under 35 USC §101**

Appellants submit that 35 USC §112, paragraph 6 states, in sum, that claims may express a means or step for performing a specified function and the claim shall be construed to cover the corresponding structure, material or acts described in the specification, including any equivalents thereof.

The independent claims define an acoustic emission system with a means for generating an acoustic emission signal that picks up, for example, sound or vibrations generated by a substrate like biological tissue or skin. The means for generating the acoustic emissions signal, therefore, picks up and uses the information that results from skin on skin contact. Nowhere have Appellants included body parts as a claim limitation. An acoustic emission system is claimed.

In view of the above, Appellants submit that the rejection made under 35 USC §101 is improper and should be withdrawn.



II. Rejection Under 35 USC §102(a)

The Examiner continues to reject claims 1, 3-6, 8-11 and 17-20 under 35 USC §102(a) as being anticipated by non-patent literature submission: Abstract of a presentation at a skin conference in Hamburg, 2003, specifically Flament et al., and entitled, "Finger Perception Metrology Correlation Between Friction Force and Acoustic Emission", (hereinafter, abstract).

In the rejection, the Examiner maintains, in summary, that the abstract discloses a tactile acoustic emission measurement and analysis apparatus having a means for generating, collecting, storing and displaying an emission signal. The Examiner continues and mentions that the reference discloses a means for correlating the emission signal with an attribute of skin frictional forces to evaluate appearance of skin characteristics where the apparatus is a tool for clinical evaluations suitable for use by consumers and clinicians to study or evaluate the effect of the application of cosmetic compositions to assist with product selection and that the system is used in air. The Examiner finally notes the reference discloses that the system has a medium for indicia. Based on the

above, the Examiner continues to believe that the novelty rejection under 35 USC §102(a) is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Appellants' position, again, that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

Independent claim 1, as presented, is directed to an acoustic emission measurement system comprising:

(A) means for generating an acoustic emission signal from a body by contacting skin on one area of the body with skin on another area of the body to produce skin/skin frictional forces;

(B) means for collecting, storing and displaying said emission signal;

(C) means for correlating said emission signal with an attribute of said skin;

wherein said system is used as a clinical tool to evaluate efficacy of cosmetic skin care and/or cleansing products and further wherein the acoustic emission signal is emitted when skin on one area of the body slides or rubs on another area of the body without motorized support.

The invention of claim 1 is further defined by dependent claims which claim, among other things, that the means for displaying the emission signal comprises a medium selected from the internet, a camera, palm pilot, mobile phone, mobile camera phone and advertising and promotional material that can include a television, magazines, brochures, posters, flyers and handouts. Additionally, claim 1 is further defined by dependent claims which claim, among other things that the system may be used by a consumer, beautician, or professional advisors and that the correlating represents attributes of pores, wrinkles, photoaging or skin texture. Claims 17-20 further define claim 1 such that the system is suitable for use in an acoustic medium which is air, water or an aqueous solution and the emission signal is generated from a hand or finger or a second body part. Appellants, again, wish to point out to the Examiner and Board that the present system is superior in that an acoustic emission signal from the body is generated by contacting skin-on-skin (please, again, see the limitations of the independent claims). Direct application of a probe or device onto the body is not required and this is what makes the present invention superior. Abrasive papers and motorized support are not required.

Independent claim 5 describes a cosmetic product selection and/or customization system comprising the acoustic emission system of claim 1. The

same, again, is further defined by the dependent claims which claim, among other things, the type of medium which may be used.

In contrast, and as already made of record, the abstract relied on by the Examiner is merely directed to finger perception metrology whereby finger sliding tests are performed on various abrasive papers to show a good correlation of the co-efficient of friction and the variations of acoustic signals (please see Sec. 19, pages 168-169 of the abstract). The process set forth in the abstract works where the hand "... remains united of a motorized support describing with a constant speed of 10 mm S-1 a journey of length 15 mm." Again, a prototype of perception metrology, therefore, is described to quantify the friction and acoustic signals during the sliding of the finger on a surface of materials. The teachings of the abstract clearly teach away from the presently claimed invention which creates emission signals from a body by contacting skin-on-skin (please see the limitations of the independent claims). Direct application of a device onto the body is not required in the current invention but is required in the technology described in the reference. Clearly, the abstract teaches the use of abrasive papers (Results section) and the need for motorized support. Appellants, again, would appreciate if the Examiner could point out where skin-to-skin contact is mentioned in the abstract. Turning to

claims 17-20, since the claims rely on independent claims requiring skin-on-skin frictional forces, they are not anticipated in view of the abstract of record. The presently claimed invention includes skin sliding or rubbing on skin and no motorized support. Appellants, again, respectfully direct the attention of the Examiner and Board to the "Results" section where the abstract teaches that finger sliding tests are performed on various abrasive papers, and the "Conclusion" section of the abstract where it has been reported that there is good correlation between the force of friction and the acoustic signal measured with the finger and an acoustic sensor on the skin.

In view of this, and again, it is clear that all the important and critical limitations set forth in the presently claimed invention are not found in a single reference, namely the abstract. It is also clear the abstract teaches away from the present invention. The teachings require a sensor to skin point of contact. Therefore, the Appellants, again, request that the novelty rejection be withdrawn and rendered moot.

### III. Rejection Under 35 USC §103

The Examiner, again, continues to reject claims 2 and 7 under 35 USC §103 as being unpatentable over the abstract of record in view of non-patent literature submission abstract of a presentation at a skin conference in Hamburg, 2003, Fleming "Mobile, multimedia computing for improved clinicopathologic correlation in dermatopathology (hereinafter, "Fleming").

In the rejection, the Examiner maintains, in summary, that the abstract and Fleming teach all of the component parts of the claimed invention. In view of this, the Examiner continues to believe that claims 2 and 7 are appropriately rejected under 35 USC §103.

Notwithstanding the Examiner's apparent position to the contrary, it is the Appellants' position, again, that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the present inventions are directed to an acoustic emission measurement system and a cosmetic product selection and/or customization system that rely on the generation of acoustic emission signals from the body by contacting skin on one area of the body with skin on another area of the body to produce skin/skin frictional forces. As already made of record, the abstract requires sliding of the finger on various abrasive papers and does not rely on skin/skin frictional forces as set forth in the presently claimed inventions. In fact, the abstract teaches away from the presently claimed invention and describes a process utilizing motorized support. Appellants,

again, would appreciate if the Examiner would show where skin-to-skin contact is taught in the abstract. While the Fleming abstract mentions the use of computers running software in dermatopathology laboratories, it does not cure the vast deficiencies of the abstract since the combination of references relied on by the Examiner, again, does not, even remotely, suggest ways to assess skin via skin/skin frictional forces.

In view of the above, it is clear, again, that all of the important and critical limitations set forth in the presently claimed invention are not found in the combination of references relied on by the Examiner. Therefore, Appellants request that the obviousness rejection be withdrawn and rendered moot.

Appellants respectfully submit the claimed invention is clearly in condition for allowance.

### VIII. CONCLUSION

Appellants respectfully request that the Board of Patent Appeals and Interferences reverse the Examiner's final rejection of claims 1-11 and 17-20.

Respectfully submitted,

*Edward A. Squillante, Jr.*

Edward A. Squillante, Jr.  
Registration No. 38,319  
Agent for Appellant(s)

EAS/pod  
(201) 894-2925



## **IX. CLAIMS APPENDIX**

1. (Previously presented) An acoustic emission measurement system comprising:  
(A) means for generating an acoustic emission signal from a body by contacting skin on one area of the body with skin on another area of the body to produce skin/skin frictional forces;  
(B) means for collecting, storing and displaying said emission signal; and  
(C) means for correlating said emission signal with an attribute of said skin;  
wherein said system is used as a clinical tool to evaluate efficacy of cosmetic skin care and/or cleansing products and further wherein the acoustic emission signal is emitted when skin on one area of the body slides or rubs on skin on another area of the body without motorized support.
2. (Original) The system according to claim 1, wherein said means for displaying said emission signal comprises a medium selected from the group consisting of Internet, camera, palm pilot, mobile phone, mobile camera phone, and advertising and promotional material selected from the group consisting of television, magazines, brochures, posters, flyers, and hand-outs.
3. (Previously presented) The system according to claim 1, wherein said system is suitable to be used by a consumer, a beautician, a professional adviser, or combination thereof to evaluate cosmetic skin care or cleaning products.
4. (Original) The system according to claim 1, wherein said correlation represents attributes of pores, wrinkles, photo aging, or skin texture.

5. (Previously presented) A cosmetic product selection and/or customization system comprising:
- (i) at least one cosmetic composition for reducing the appearance of at least one undesirable skin attribute; and
  - (ii) an acoustic emission system associated with said cosmetic composition; the acoustic emission system having a means for generating an acoustic emission signal from a body by contacting skin on one area of the body with skin on another area of the body to produce skin/skin frictional forces, and a means for evaluating current appearance of skin attributes or progress in reducing the appearance of said undesirable attributes with the use of said cosmetic composition, the acoustic emission signal is emitted when skin on one area of the body slides or rubs on skin on another area of the body without motorized support.
6. (Previously presented) The system according to claim 5, wherein said acoustic emission system comprises a medium for indicia of at least two different skin attributes, thereby allowing consumers or clinicians to distinguish skin attributes resulting from application and/or wash-off of a cosmetic product.
7. (Previously presented) The system according to claim 5, wherein the system further comprises a means for displaying the emission signal which comprises a medium selected from the group consisting of Internet, camera, palm pilot, mobile phone and advertising material.
8. (Previously presented) The system according to claim 5, whereby said system is suitable to facilitate adherence by a consumer to a product usage regimen on the basis of said skin attributes.

9. (Previously presented) The system according to claim 5, wherein said acoustic emission measurement system is suitable to be placed alongside a container holding the cosmetic composition.

10. (Previously presented) The system according to claim 5, whereby said system is suitable to facilitate cosmetic product selection on the basis of said skin attributes.

11. (Previously presented) The cosmetic system according to claim 5, wherein said skin attributes are selected from the group consisting of pores, wrinkles, photo aging, or skin texture.

12-16 (cancelled)

17. (Previously presented) The system according to claim 1 wherein the system is suitable for use in an acoustic medium which is air, water or an aqueous solution.

18. (Previously presented) The system according to claim 1 wherein the acoustic emission signal is generated from a hand or finger and a second body part.

19. (Previously presented) The system according to claim 5 wherein the acoustic emission system is suitable for use in an acoustic medium which is air, water or an aqueous solution.

20. (Previously presented) The system according to claim 5 wherein the acoustic emission signal is generated from a hand or finger and a second body part.

## **X. EVIDENCE APPENDIX**

No evidence pursuant to §§ 1.130, 1.131 and/or 1.132 is submitted herewith.

## **XI. RELATED PROCEEDINGS APPENDIX**

No decisions rendered by a Court or the Board have been made; therefore, no such decisions are submitted herewith.